

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

VIACHESLAV ZHUKOV,)	
)	
Movant,)	
)	Case No. CV415-243
v.)	CR414-196
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Viacheslav Zhukov, who pled guilty to violating 50 U.S.C. § 1705, CR414-196 doc, 48, has filed a 28 U.S.C. § 2255 motion -- even though his direct appeal is still pending. Doc. 61. He knows this because the § 2255 motion form that he used asked him whether he filed an appeal. *Id.* at 2. He indicated “Yes” and typed “Affirmed,” but failed to respond to the “Date of result (if you know)” question. It’s not surprising that he left that blank because the attached Eleventh Circuit docket sheet confirms that his appeal is still pending. Hence, his “affirmed” assertion is false.¹

¹ He signed his form § 2255 motion under penalty of perjury. Doc. 61 at 13. Lying under oath, either live or “on paper,” is illegal and may result in a separate prosecution for perjury. *See United States v. Roberts*, 308 F.3d 1147, 1155 (11th Cir.

Nor does Zhukov supply any extraordinary circumstances to negate standard prematurity doctrine here (he raises a plain-vanilla ineffective assistance of counsel claim). *United States v. Casara-Rivas*, 311 F. App'x 269, 272 (11th Cir. 2009) (“[A]bsent extraordinary circumstances, a defendant may not seek collateral relief while his direct appeal is pending, as the outcome of the direct appeal may negate the need for habeas relief . . . [T]he district court should have dismissed [the] . . . motion as premature.”).

Suffice it to say that this § 2255 motion must be **DISMISSED WITHOUT PREJUDICE**.² *Doe v. Hastings*, 2013 WL 607655 at * 2 (S.D. Ga. Feb. 5, 2013) (“Because the direct appeal of Doe's convictions is currently pending, Doe's convictions are not yet final, and § 2255 is not yet an available remedy.”), cited in *Freeman v. United States*, 2013 WL

2002) (defendant's falsely subscribed to statement in his habeas petition that he had not previously filed a § 2255 motion was “material” for purposes of perjury prosecution; statement fooled the clerk of the court into accepting the “writ” for filing, and led the magistrate judge to consider its merits until she discovered that the “writ” was a successive § 2255 motion in disguise); *United States v. Dickerson*, No. CR608-36, doc. 1 (S.D. Ga. Dec. 11, 2008) (§ 2255 movant indicted for perjury for knowingly lying in his motion seeking collateral relief from his conviction); *id.*, doc. 47 (guilty verdict), cited in *Irick v. United States*, 2009 WL 2992562 at * 2 (S.D. Ga. Sept. 17, 2009; see also *Colony Ins. Co. v. 9400 Abercorn, LLC*, 866 F. Supp. 2d 1376, 1378 n. 2 (S.D. Ga. 2012).

² The Court is preliminarily reviewing this case under Rule 4(b) of the Rules Governing Section § 2255 Proceedings.

5502915 at * 2 (S.D. Ga. Oct. 2, 2013) (same). He faces sanctions, by the way, if he files any more frivolous motions like this.

The Court also recommends denial of a certificate of appealability (COA) and denial of *in forma pauperis* (IFP) status on appeal. A federal prisoner must obtain a COA before appealing the denial of his motion to vacate. The District Court “must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts. Applying the COA standards, which are set forth in *Brown v. United States*, 2009 WL 307872, at *1-2 (S.D.Ga. Feb. 9, 2009), the Court discerns no COA-worthy issues regarding the instant premature motion, so no COA should issue. 28 U.S.C. 2253(c)(1); *see Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000) (“Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case ... no appeal would be warranted.”). Since there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Thus, IFP status on appeal should likewise be denied. 28 U.S.C. § 1915(a)(3).


SO REPORTED AND RECOMMENDED, this 18th day of
September, 2015.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

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General Docket
United States Court of Appeals for the Eleventh Circuit


Court of Appeals Docket #: 14-15527 USA v. Viacheslav Zhukov Appeal From: Southern District of Georgia Fee Status: IFP Granted	Docketed: 12/10/2014 Case Handler: Thomas, David L., AA (404) 335-6169
Case Type Information: 1) Criminal 2) Direct Criminal 3) -	
Originating Court Information: District: 113J-4 : <u>4:14-cr-00196-WTM-GRS-1</u> Court Reporter: Victoria Root Sentencing Judge: William T. Moore, Junior, U.S. District Judge Date Filed: 06/04/2014 Date NOA Filed: 12/09/2014	


05/12/2015  Notice of Filing filed by Attorney John Davidson Carson, Jr. for Appellant Viacheslav Zhukov. (ECF: John Carson)


05/26/2015  Notice of Filing Transcript filed by Attorney John Davidson Carson, Jr. for Appellant Viacheslav Zhukov. (ECF: John Carson)

06/02/2015 TRANSCRIPTS FILED. Transcript Order: Court Reporter: Victoria Root, Filer: Viacheslav Zhukov, Dt. all Trans. Filed: 05/14/2015, Proceeding Type and Date: Plea Hearing 08/18/2014.

06/02/2015  Briefing Notice issued to Appellant Viacheslav Zhukov. The appellants brief is due on or before 06/23/2015.


06/22/2015  *Renewed MOTION for appointment of counsel filed by Appellant Viacheslav Zhukov. Opposition to Motion is Unknown [7509348-1]*

06/23/2015  2nd Anders brief: Appellant's Brief filed by Appellant Viacheslav Zhukov. (ECF: John Carson)

06/23/2015  Appendix filed [1 VOLUMES] by Appellant Viacheslav Zhukov. (ECF: John Carson)

06/25/2015 Received (ANDERS) paper copies of EBrief filed by Appellant Viacheslav Zhukov.

06/25/2015 Received paper copies of EAppendix filed by Appellant Viacheslav Zhukov. 1 VOLUMES - 2 SETS

07/07/2015  Response construed as Motion to withdraw filed by Appellant Viacheslav Zhukov.--[Edited 07/09/2015 by DLT] . *Opposition to Motion is Unknown. [7514372-1]--[Edited 07/28/2015 by RAV] (ECF: John Carson)*

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